IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/02/2004

CORAM

THE HON'BLE Mr. JUSTICE P.D.DINAKARAN

Writ Petition No.11434 of 2003

Kamalam .. Petitioner

-Vs-

1. The State of Tamil Nadu,
rep. by its Secretary to
Govt.,
Transport Department,
Fort St. George,
Chennai-600009.

2. The Managing Director,
Tamil Nadu State Transport
Corporation,
(Madurai Division III) Ltd.,
Nagercoil,
Kanyakumari District.

3. The General Manager,
Tamil Nadu State Transport
Corporation,
(Madurai Division III) Ltd.,
Nagercoil,
Kanyakumari District. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.R.Rajesh for
Mr.P.J.Beny Switesingh Dhas

For Respondents : Mr.P.S.Jayakumar,
Govt. Advocate for R1.
Mr.K.B.S.Srinivas Rao
for Mr.V.R.Kamalanathan
Standing Counsel R2&3.

:O R D E R
The petitioner is the wife of one S.Ramaswamy, who was originally

appointed as a Conductor on daily wages in the erstwhile Tamil Nadu State Transport Department with effect from 21.8.1963 and thereafter, the service of the said Ramaswamy was regularised as a Conductor with effect from 1.9.1964.

1.2. After formation of the Kattabomman Transport Corporation Limited in Kanyakumari and Tirunelveli Districts with effect from 1.1.1974, the service of the said Ramaswamy was permanently transferred and absorbed as an employee of the said Kattabomman Transport Corporation Limited with effect from 1.5.1975 and thereafter, on his willingness, he was absorbed in the service of the Nesamony Transport Corporation Limited at Nagercoil, with effect from 1.4.1983, where the said Ramaswamy retired on 31.10.1991. The said Ramaswamy received pension till his death and thereafter, the first respondent- Government, by letter dated 28.3.2003, refused to grant family pension to the petitioner.

1.3. Aggrieved by the said letter of the first respondent, the petitioner seeks a writ of Certiorarified Mandamus to call for the records of the first respondent in Letter No.26388/a.p.I/2002-2, dated 28.3.2003, quash the same and to direct the first respondent to grant family pension and its arrears to the petitioner from the date of death of the petitioner's spouse dated 28.1.1998.

2.1. When the family pension was denied to the employees of the erstwhile Tamil Nadu State Transport Department, merely due to their transfer and absorption in the State I Transport Corporation, based on G.O.Ms.No.1028, Transport Department, dated 23.9.1985, the retired employees association of the Tamil Nadu State Transport Corporation filed Writ Petition No.21204 of 1992 challenging the said Government Order refusing family pension to the employees, who were originally employed in the State Transport Department of the Government of Tamil Nadu and then transferred and absorbed in the State Owned Transport Corporations.

2.2. Concededly, under an identical facts and circumstances, the Apex Court in The State of Tamil Nadu and Others vs. V.S.Balakrishnan and others, reported in 1994 Supplementary 3 SCC 204, held as follows:-
"We may now examine the terminal benefits offered in G.O.1921. We have already enumerated in detail the said benefits in earlier part of the judgment. We are of the view that except the provisions regarding family pension and application of Future Liberalised Pension Rules (item 3(c) and 3(f) of G.O.1921) all other provisions of the said G. O. Are reasonable and no fault can be found therewith. We are of the view that once an optee for permanent absorption in the Federation is entitled to pro rata pension in respect of the period of service rendered by him under the Government, he is also entitled to the benefit of the family pension. .. "(vide para 14 of the judgment)

2.3. Following the decision of the Apex Court in The State of Tamil Nadu and Others vs. V.S.Balakrishnan and others, referred supra, this Court by order dated 7.3.2001 disposed Writ Petition No.21204 of 199 2 as follows:-
" 5. Applying the aforesaid dictum to the facts of the present case,

I have no hesitation in holding that the petitioners are entitled to family pension. In this connection, it has to be noted that the respondent Government made representation to the employee to the effect that the Government servants who opt to be absorbed in the Transport Corporation would, on such absorption be entitled to pay in Public Sector Undertakings besides the terminal benefits in the form of pension, gratuity, etc. earned by them in Government service prior to such absorption, vide G.O.Ms.No.378 (Finance) dated 16.4.1975. However, the Government order also contains a provision that since the optees will cease to be Government servants, the Government liability for family pension will cease. The said order, in my considered opinion can only be understood in the sense that the optees like the members of the petitioner Association would be entitled to the terminal benefits including family pension in respect of the services rendered by them in Government. But, the respondents have construed the aforesaid G.O. to deny the family pension to persons like the members of the petitioner Association even in respect of the services put in by them under Government, would be contrary to the scheme and purport of the various Government Orders, including the one under G.O.Ms.No.378 (Finance) dated 19.4.1975 and opposed to the principles of promissory estoppel.

6. That apart, this Court is told, there is no pension scheme in Transport Corporation at that point of time, in which the members of the petitioner Association were employed. It is also not disputed that the members of the petitioner Association are also not receiving any other family pension from their employers namely, various Transport Corporations. In the aforesaid view, in my considered opinion, the members of the petitioner Association are entitled to the family pension from the Government in respect of the services put in by them under the Government.

7. Of course, learned Government Pleader relying on Rule 34 of the Tamil Nadu Pension Rules would contend that, the members of the petitioner Association are not entitled to the family pension as prayed. On a perusal of the provisions of the aforesaid rules, I am afraid that it will not apply to the facts of the present case. First of all, the rule in question came into force only with effect from 1.1.1979 whereas, the employees were absorbed in various Corporations way back in 1974-75. The rule in so far as it deprives the employees of their right to family pension, cannot be construed to give retrospective effect unless such retrospective effect is expressly provided. Secondly, Rule 34 of the rules refers to, transfer of individuals in public interest from Government to Corporation, the rule does not appear to cover a case similar to the one in question, where the Government set up a Corporation and divested itself of the obligation to run it, as part of the Department. Thirdly, as pe r Rule 34, employees who are transferred from Government to Corporations, are entitled to terminal benefits only after they retire from the Corporation, but, so far as the employees of the petitioner Association are concerned, they were found entitled to the terminal benefits immediately upon absorption in the Corporation, which shows that the principle underlying Rule 34 would not apply to the case on hand.

8. For the aforesaid reasons, I allow this writ petition and direct the first respondent Government to grant family pension under the existing Pension Rules to the families of the members of the petitioner Association, who were Government employees and who had been permanently absorbed in the various Transport Corporations in respect of the services rendered by them under the Government, as expeditiously as possible at any rate not later than three months from the date of receipt of copy of this order. Writ petition allowed. No costs."

2.4. Again in two individual cases filed by M.Gracy and G.Rajam in Writ Petition Nos.36939 and 37336 of 2002 respectively, who are the dependents of the employees of the erstwhile Tamil Nadu State Transport Department, this Court by order dated 13.12.2002, directed the first respondent-Government to grant family pension under the existing Pension Rules to the petitioners therein, as expeditiously as possible at any rate not later than three months from the date of receipt of copy of that order.

3. The ratio laid down by the Apex Court in the State of Tamil Nadu and Others v. V.S.Balakrishnan and others, referred supra, as well as by this Court in Writ Petition No.21204 of 1992 by order dated 7.3.2 001 and Writ Petition Nos.36939 and 37336 of 2002 by order dated 13.1 2.2002, is squarely applicable to the facts of the instant case, as the husband of the petitioner was originally appointed in the Tamil Nadu State Transport Department and thereafter, was transferred and absorbed by the State Owned Transport Corporations, viz., Kattabomman Transport Corporation Limited, initially and Nesamony Transport Corporation Limited at Nagercoil.

4. Hence, applying the decisions referred to above, the writ petition is also allowed as prayed for, directing the first respondentGovernment to grant family pension including the arrears, if any, under the existing Pension Rules, to the petitioner, as expeditiously as possible in any event not later than three months from the date of receipt of copy of this order. No costs.

ATR

To,
1. The Secretary to
Govt.,
Transport Department,
State of Tamil Nadu,
Fort St. George,
Chennai-600009.

2. The Managing Director,
Tamil Nadu State Transport
Corporation,
(Madurai Division III) Ltd.,
Nagercoil,

Kanyakumari District.

3. The General Manager,
Tamil Nadu State Transport
Corporation,
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